IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

MACA.No. 1093 of 2004
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OPMV.1777/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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PETITIONER/APPELLANT
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THE MANAGING DIRECTOR,
STATE EXPRESS TRANSPORT CORPORATION,
(TAMILNADU) LTD; CHENNAI - 02.

BY ADV. SRI.SUBHASH CYRIAC

RESPONDENTS: RESPONDENTS
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1. KUMARI M.G., W/O.RAJAN,
   PAUWATH HOUSE, KUDAVECHOOR KARA,
   AMBIKAMARKET P.O., VAIKOM.
2. RAJESH.R, S/O.RAJAN,
   DO. DO. DO.
3. RAKHI R., D/O.RAJAN,
   DO. DO. DO.
4. RAKHESH, S/O.RAJAN,
   DO. DO. DO.
5. VILASINI AMMA, W/O.MADHAVAN PILLA,
   AYYANKANDEZHATHU HOUSE, KADAVANTHRA,
   ELAMKULAM, ERNAKULAM.
6. P.MUTHAI, S/O.PINNIAPPA THEVAR,
   DOOR 11, A.R.ROAD, MADURAI.

BY ADV. SRI.P.RAVINDRA BABU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

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C.M. Application No 1636 of 2004
and M.A.C.A No 1093 of 2004

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Dated: 26th September 2007

JUDGMENT

Radhakrishnan, J.

There is a delay of 481 days in filing the appeal. We have perused the affidavit filed in support of the petition. Sufficient ground has not been made out to condone the delay.

2. When the delay petition came up for hearing we heard counsel for the appellant and the respondents. Appeal was preferred against the award passed in O.P. (M.V) No 1777 of 1996 by the M.A.C.T, Kottayam. Claimants are the wife, children and mother of the deceased. It is seen that deceased was 44 years of age at the time of accident and was a Container Surveyor in a private limited company getting an income of Rs 3,000/-. He was travelling in a bus bearing registration number TN-01/N 9057. When the bus reached Kaduvappara kara on the K.K. Road it went out of control of the driver and fell into a ravine. Deceased was thrown out of the bus and sustained serious injuries and later succumbed to the injuries. Legal

heirs of the deceased claimed an amount of Rs 6 lakhs. Tribunal after considering the facts and circumstances of the case awarded a sum of Rs 4,56,000/-. The main contention raised by the appellant was that the accident had occurred as a result of act of God and that the road was slippery on account of spillage of oil, rain water and the road was sloping downwards. In spite of the best efforts taken by the driver accident could not be averted. There is nothing to show that the deceased was negligent or that the accident had occurred because of the negligence of the driver of the stage carriage. Further the plea of act of God is not sustainable when the negligence of the driver was proved. Tribunal has found so on the basis of evidence adduced in this case. In such circumstances, we find no reason to condone the delay as well as to entertain the appeal. Therefore, both the petition to condone the delay and the appeal would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

26/09/2007
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